

GEORGE W. VRABLE

IBLA 81-431

Decided September 1, 1981

Appeal from a decision of the California State Office, Bureau of Land Management, declaring null and void mining claims CA MC 54979 through CA MC 54984.

Affirmed.

1. Mining Claims: Assessment Work

A mining claimant's failure to file timely evidence of annual assessment work is not excused by alleged tardiness of the State recorder's office in recording this information and returning a record copy to claimant, as a claimant is permitted under 43 CFR 3833.2-2(a) to satisfy the Federal filing requirements by submitting a duplicate of the assessment notice, even though it has not yet been filed for record with the State.

2. Federal Land Policy and Management Act of 1976: Recordation of Mining Claims and Abandonment -- Mining Claims: Abandonment

The failure to file the instruments required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1 and 3833.2 in the proper Bureau of Land Management office within the time periods prescribed therein conclusively constitutes abandonment of the mining claim by the owner.

APPEARANCES: George W. Vrable, pro se.

OPINION BY ADMINISTRATIVE JUDGE STUEBING

George W. Vrable appeals from a decision of the California State Office, Bureau of Land Management (BLM), dated January 30, 1981, declaring the Holy Cross VI, VII, VIII, Johnny No. 1, Pip No. 1, and Pishta No. 1 mining claims abandoned and void. 1/ BLM based its decision on the terms of 43 CFR 3833.2-1, which requires the owner of an unpatented mining claim to file with BLM on or before December 30, 1980, evidence of annual assessment work performed during the preceding assessment year or a notice of intention to hold the mining claim. 2/

Appellant's evidence of assessment work was filed with BLM on February 23, 1981. In his statement of reasons on appeal, Vrable explains that his filing with BLM was tardy because the San Diego County Recorder's Office did not send a copy of his recorded assessment work notice back to him until January 1981. Appellant alleges that his assessment work notice had been sent to the San Diego Recorder's Office in September 1980.

[1, 2] Appellant's explanation for his tardy filing suggests that he believed that his filing with BLM must bear the recorder's stamp of San Diego County. This is not the case. Regulation 43 CFR 3833.2-2(a) requires that evidence of assessment work be in the form of an exact legible reproduction or duplicate of the affidavit of assessment work which was or will be filed for record pursuant to section 314(a) of the Federal Land Policy and Management Act (FLPMA), 43 U.S.C. § 1744 (1976), in the local jurisdiction of the State where the claim is located and recorded. Thus, appellant could have timely submitted his evidence of assessment work even though it had not yet been filed with San Diego County. Harry J. Phillips, 47 IBLA 252 (1980).

1/ The BLM decision included the serial numbers of all six claims, but inadvertently omitted the name of the Johnny No. 1. However, we regard this as mere harmless error, as appellant included all six claims in his combined notice of appeal and statement of reasons, and our review of the record establishes that the Johnny No. 1 is in the same status as the other claims.

2/ BLM also found that no location notices for the subject claims had been filed. Under section 314(b), Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744(b) (1976), the failure to file such notices is an independent ground for holding that the subject claims be deemed abandoned. 43 U.S.C. § 1744(c) (1976). We note, however, that the claims have been assigned serial numbers by the California State Office, an act which generally follows the filing of a notice of location. Quitclaim deeds in the file suggest that the claims involved were located prior to Oct. 21, 1976, the date of enactment of FLPMA.

All persons dealing with the Government are presumed to have knowledge of duly promulgated rules and regulations regardless of their actual knowledge of what is contained in such regulations. John J. O'Loughlin, 50 IBLA 50 (1980). The failure to file an instrument required by 43 CFR 3833.2-1 within the time periods prescribed therein shall be deemed conclusively to constitute an abandonment of the mining claim, and it shall be void. 43 CFR 3833.4.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision of the State Office is affirmed.

Edward W. Stuebing
Administrative Judge

We concur:

Anne Poindexter Lewis
Administrative Judge

James L. Burski
Administrative Judge

